

BOARD OF APPEALS CASE NO. 5200

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BEFORE THE

APPLICANTS: Cheryl & Gary Hinchy

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ZONING HEARING EXAMINER

**REQUEST: Variance to enlarge an
existing deck within the required front
yard setback; 711 Hookers Mill Road,
Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/28/01 & 12/5/01

HEARING DATE: March 4, 2002

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Record: 11/30/01 & 12/7/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Cheryl Hinchy & Gary Hinchy, are requesting a variance, pursuant to Sections 267-23C(1)(a)(2) and 267-36B, Table IV, of the Harford County Code, to enlarge the existing deck within the required 37 foot front yard setback in an R1 District.

The subject parcel is located at 711 Hookers Mill Road, Abingdon, Maryland 21009, in the First Election District, and is more particularly identified on Tax Map 62, Grid 1A, Parcel 457, Lot 16, in the subdivision of Bradford Barrens. The parcel contains 0.50 acres, more or less.

The Applicant, Gary Hinchy, Jr., appeared and testified that he and the Co-Applicant, Cheryl Hinchy, are the owners of the subject property. He stated that he had read the Department of Planning and Zoning Staff Report, and had no changes or corrections to the information contained therein.

Mr. Hinchy described his property as a rectangular lot, improved by a one-story dwelling with an attached rear deck, and a raised front porch. The property is also improved by a macadam drive, a detached garage, a split rail fence and an above-ground pool. There is a small shed in the right rear corner of the lot. The existing front porch is constructed within the 37 foot front yard setback, and is located 31.5 feet from the Hookers Mill Road right-of-way.

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The Applicant testified that he proposes to extend the existing porch across the front of the house, and wrap it around the dwelling, to connect with a door and landing on the right side of the home. He also proposes to construct a roof over the porch to provide protection from the elements. The new construction will be 31.5 feet from the Hookers Mill Road right-of-way at its closest point, and will not encroach any further into the front yard setback than the existing porch. Mr. Hinchy testified that due to the placement of the dwelling on his lot, and its proximity to Hookers Mill Road, the Applicants will be unable to improve the existing porch unless they are able to obtain a variance.

Finally, the witness testified that the proposed construction will be similar in size and appearance to other porches found in Bradford Barren, and that it will be compatible with other property in the neighborhood. According to the witness, a similar covered porch was recently constructed on the adjacent property. In his opinion, the proposed porch will have no adverse impact on neighboring properties

The Department of Planning and Zoning recommended approval of the subject request in its Staff Report dated July 30, 2001, stating that:

There is an existing porch attached to the front of the Applicant's dwelling. The request is to enlarge the porch and to add a roof to provide protection from the weather. The existing setbacks will not be further reduced. The proposal will not have an impact on Hookers Mill Road. The request will not adversely impact the adjacent properties or the intent of the Code."

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Cheryl Hinchy & Gary Hinchy, are requesting a variance, pursuant to Sections 267-23C(1)(a)(2) and 267-36B, Table IV, of the Harford County Code, to enlarge the existing deck, within the required 37 foot front yard setback, in an R1 District. The proposed construction would not encroach any further into the front yard setback than the existing porch, and its closest point will be 31.5 feet from the Hookers Mill Road right-of-way. Harford County Code Section 267-36B, Table VI: Design Requirements for Specific Uses in an R1 Urban Residential District, provides for a minimum 40-foot front yard depth; however, the Code allows porches to encroach 3 feet into the front yard.

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Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding lots. Cromwell, supra, at 721. If the subject property is unique, the trier of fact may proceed to the second prong of the test. That prong involves determining whether literal enforcement of the zoning ordinance with regard to the property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The placement of the dwelling on the lot, and its proximity to Hookers Mill Road, renders the property owner unable to improve the existing front porch without obtaining a variance.

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty for the Applicants. If the requested variance is not granted, the Applicants will be denied property rights commonly enjoyed by other homeowners in Bradford Barrens.

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Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The proposed construction will not encroach any further into the setback than the existing porch. The adjacent homeowners recently completed construction of a similar covered porch. The proposal will have no impact on traffic on Hookers Mill Road.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date: APRIL 16, 2002

**Rebecca A. Bryant
Zoning Hearing Examiner**